Supreme Court, U.S.
FILED
NOV 4 1993
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No. 93-578

In The

Supreme Court of the United States

October Term, 1993

SNAP-ON TOOLS CORPORATION,
JAMES GOMENDI and STEVE GULLEDGE,

Petitioners,

v.

WILLIAM C. VETTER and
ELAINE LAPOINTE-VETTER,

Respondents.

**Petition For A Writ Of Certiorari
To The Montana District Court For The
Fourth Judicial District, Missoula County, Montana**

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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ISSUE

Do the developments summarized herein moot the issue raised by the pending petition for a writ of certiorari?

SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

Pursuant to Supreme Court Rule 15.7, petitioners submit this supplemental brief in support of their petition for a writ of certiorari, for the purpose of bringing to the Court's attention intervening matter not available at the time the original petition was filed.

INTERVENING DEVELOPMENTS

On October 8, 1993, the United States District Court for the District of Montana issued an opinion and order (received by counsel the following week) that:

(1) Granted the motion of Snap-on Tools Corporation to compel William Vetter to arbitrate his claims against Snap-on;

(2) Concluded that Snap-on was entitled to an order staying litigation of Mr. Vetter's claims, then pending in the District Court for the Fourth Judicial District, Missoula County, Montana, but declined to order such a stay, expressing the expectation that the state court itself would refrain from proceeding in light of the order compelling arbitration; and

(3) Declined to order arbitration of Mr. Vetter's claims against the individual state court defendants, who were not before the federal court, once again, however, expressing the expectation that the state court would do so.

A copy of the federal court's opinion and order is attached as Exhibit 1.

On October 25, 1993, the District Court for the Fourth Judicial District, Missoula County, Montana issued an opinion and order that:

(1) Compelled William Vetter to arbitrate his claims against the individual defendants;

(2) Stayed litigation proceedings on William Vetter's claims against both the corporate and the individual defendants, pending arbitration;

(3) Denied William Vetter's motion to stay proceedings in an arbitration commenced by Snap-on and the individual defendants; and

(4) Denied the motion of Snap-on and the individual defendants to stay litigation proceedings on the claims of Elaine Lapointe-Vetter pending arbitration.

The state court's opinion makes it clear that it based these rulings on the federal court ruling, that it viewed the matter as discretionary, and that it was deferring to the federal court's disposition of the arbitration issue. A copy of the state court opinion is attached as Exhibit 2.

On October 29, 1993, William Vetter appealed the decision of the United States District Court for the District of Montana to the United States Court of Appeals for the Ninth Circuit. A copy of the notice of appeal is attached as Exhibit 3.

ARGUMENT

These developments do not moot the petition, and in fact emphasize the importance of deciding the issue it raises.

If the Ninth Circuit reverses the federal court decision in Snap-on's favor, there is a strong probability that the state court decision protecting the arbitration rights of Snap-on and the individual state court defendants will itself be vacated, and that the state court will revert to the position it originally took. The issue raised by the petition for a writ of certiorari is therefore still very much alive. Although they have obtained substantial relief (thus far) as a result of the federal court decision, petitioners have a strong, continuing interest in vindication of the contention that they were entitled to the state court relief they sought as a matter of federal law and not as a matter of comity or discretionary deference to a federal court. *See Edward J. DeBartolo Corporation v. N.L.R.B.*, 463 U.S. 147, 153 n.5 (1983).

The baroque procedural maneuvers described above underline the importance of resolving the split of authority over the applicability of 9 U.S.C. § 3 in state court. The parties have now taken their collateral dispute over arbitration to five courts: the state trial court (twice), the Montana Supreme Court, this Court, the United States District Court for the District of Montana, and the United States Court of Appeals for the Ninth Circuit.

A run-of-the-mine business tort claim that an arbitral panel could have disposed of by final and binding award within fifteen to twenty weeks has thus now consumed nine months without making the slightest progress toward resolution on the merits. In the process it has

monopolized substantial judicial resources, thwarted the congressional intent informing the Federal Arbitration Act, and deprived petitioners of key benefits for which Snap-on contracted when it entered into the arbitration agreement with Mr. Vetter.

This Dickensian litigatory waltz has served the interests of neither the parties nor the public. It should not have happened. It can be prevented in the future only by definitive guidance that this Court and this Court alone is in a position to provide.

Dated this 16th day of November, 1993.

Respectfully submitted,

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EXHIBITS

EXHIBIT 1

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
MISSOULA DIVISION

* * *

SNAP-ON TOOLS CORPORATION,

Petitioner,

-v-

WILLIAM C. VETTER,

Respondent.

CV 93-34-M-CCL

OPINION AND ORDER

(Filed Oct. 8, 1993)

* * *

A hearing on a petition to compel arbitration and a petition to stay state court proceedings was held October 4, 1993. Jurisdiction is proper under 28 U.S.C. § 1332. For the reasons set forth below, I grant these petitions.

BACKGROUND

On September 11, 1990, Petitioner Snap-on Tools Corporation (Snap-on) and Respondent William C. Vetter (Vetter) entered into a dealership agreement containing a provision for arbitration. On February 24, 1993, Vetter and his spouse, Elaine Lapointe-Vetter, commenced an action in state court in Missoula County, Montana, against Snap-on and against one current employee, Steve Gulledge, and another former employee, James Gomendi. On March 18, 1993, Snap-on filed this action against Vetter in federal court to compel arbitration. On March 22, 1993, Snap-on moved the state court to stay its action pending arbitration.

After argument, the state court denied Snap-on's motion by order dated May 27, 1993. Snap-on sought a writ of supervisory control from the Montana Supreme Court, which was denied on July 27, 1993. Snap-on also appealed the state court order, but on August 31, 1993, the Montana Supreme Court dismissed Snap-on's appeal as interlocutory. On August 11, 1993, Snap-on made a demand for arbitration to the American Arbitration Association, requesting that the arbitration hearing take place in Missoula, Montana. Finally, on September 23, 1993, Snap-on petitioned this court to stay the state court proceeding.

FACTS

On its signature page, the dealership agreement between Snap-on and Vetter provides for arbitration. The arbitration provision consists of three paragraphs, beginning as follows:

> 11. RESOLUTION OF DISPUTES – ARBITRATION. Any controversy or dispute arising out of or relating to this Agreement, including, but not limited to, any claim by the Dealer concerning the entry into, performance under or termination of this Agreement, any claim against an employee, . . . or any claim of breach of the Agreement, shall be submitted to final and binding arbitration as the sole and exclusive remedy for any controversy or dispute.

After operating a Snap-on dealership for approximately nine months, Vetter terminated the dealership agreement on June 6, 1991. William Vetter and Elaine Lapointe-Vetter's suit in state court, filed some twenty months later, alleges intentional and/or negligent representation,

negligence, and interference with economic advantage in connection with William Vetter's signing of the dealership agreement.

DISCUSSION

Petitioner seeks to compel arbitration under the Federal Arbitration Act (FAA), 9 U.S.C. § 4.[1] The parties do not contest that the dealership agreement evidences a transaction involving interstate commerce. *See* 9 U.S.C. § 2.

A. Petition to Compel Arbitration.

First, this court must determine whether Snap-on and Vetter agreed to arbitrate the dispute. *Mitsubishi Motors Corp. v. Soler Chrysler-Plymouth, Inc.*, 473 U.S. 614, 626, 105 S.Ct. 3346, 3353, 87 L.Ed.2d 444 (1985). If the arbitration

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[1] In pertinent part, 9 U.S.C. § 4 states:

> A party aggrieved by the alleged failure, neglect, or refusal of another to arbitrate under a written agreement for arbitration may petition any United States district court which, save for such agreement, would have jurisdiction under Title 28 [28 USCS §§ 1 et seq.], in a civil action or in admiralty of the subject matter of a suit arising out of the controversy between the parties, for an order directing that such arbitration proceed in the manner provided for in such agreement. . . . The court shall hear the parties, and upon being satisfied that the making of the agreement for arbitration or the failure to comply therewith is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement.

clause is valid and the claims fall within the scope of the arbitration clause, then the dispute must be submitted to arbitration. In this case, it is clear that Vetter's claims arise out of or are related to his dealership agreement, and thus fall within the scope of the arbitration clause.

Despite the affidavits provided by Vetter, there can be no genuine dispute that the parties agreed to arbitrate this controversy. In Vetter's state court affidavit, dated April 2, 1993, Vetter states that

> [a]t no time did any of them explain to me the significance of the arbitration provision in paragraph 11. . . . At no time did they tell me that I was losing my rights, in the event I had a dispute with Snap-On, (a) to file a case in court, (b) to have a jury determine the facts and decide whether I was entitled to any money from Snap-On, (c) to have legal rules of evidence apply to prevent improper matters from being considered, (d) to appeal to another court from any decision which might be entered, or (e) otherwise to have my dispute handled in court in the normal manner. My understanding at the time was that every citizen had the right to resort to court if he had a dispute. At no time was I advised that any dispute I had with Snap-On had to be arbitrated. . . .

In a similar case where appellant claimed to have been misled by appellee's failure to disclose the meaning and effect of an arbitration clause, the court stated that

> [w]e know of no case holding that parties dealing at arm's length have a duty to explain to each other the terms of a written contract. We decline to impose such an obligation where the language of the contract clearly and explicitly

> provides for arbitration of disputes arising out of the contractual relationship.

Cohen v. Wedbush, Noble, Cooke, Inc., 841 F.2d 282, 287 (9th Cir. 1988). I specifically find that no special relationship or fiduciary duties existed between Snap-on and Vetter. The agreement between the parties indicates that their relationship was based on an arm's length, commercial transaction.

As the Ninth Circuit panel in *Cohen v. Wedbush* further discussed, even if an actual misrepresentation was made regarding the function or effect of the arbitration clause, the misrepresentation could render the contract voidable only if the party had reasonably relied upon the misrepresentation. *Id.* (citing 12 S. Williston, *The Law of Contracts* § 1515B, at 485 (3d ed. 1970)). Such reliance cannot be reasonable when the party could have, "through the exercise of reasonable diligence, ascertained the truth of the matter." *Id.* There can be no unfairness in expecting Vetter to have read the contract he signed. *See id.* Furthermore, the arbitration provision was not hidden from Vetter. It was a large paragraph with a clear subheading in capital letters ("RESOLUTION OF DISPUTES – ARBITRATION") located just inches above Vetter's signature.

In an affidavit prepared just prior to the hearing on the motion to compel arbitration and the petition for a stay of state court proceedings, dated September 29, 1993, Vetter asserts again that Snap-on's employees "never explained to me that the agreements contained a provision which required me to resolve any dispute with Snap-On by arbitration." In addition, however, Vetter asserts

an entirely new claim that "Snap-On's employees led me to believe that, if I had a dispute with Snap-On in the future, I could go to court to resolve that dispute." This vague assertion still does not give rise to a genuine claim of fraudulent inducement of the arbitration provision itself. Besides being inconsistent with Vetter's earlier affidavits and Vetter's statements of fact presented in briefs, this statement is "directly contrary to the specific and unambiguous terms of a written arbitration agreement [and does] not, as a matter of law, state a claim for fraud." *Id.* at 288.

Vetter also argues that the arbitration clause is invalid because it lacks a warning notice mandated by Montana law. Section 27-5-114(4), Montana Code Annotated, requires that all contracts bear a conspicuous warning regarding the arbitration clause.[2] In his brief, Vetter cites *Volt Information Sciences, Inc. v. Board of Trustees*, 489 U.S. 468 (1989), for the proposition that state arbitration law procedural provisions are enforceable if they do not conflict with federal policy. Volt is distinguishable, however, because that arbitration clause was governed by California state law. *Id.* at 477. Here, the arbitration clause provides that it is governed exclusively by the Federal Arbitration Act (FAA) according to the rules of the American Arbitration Association (AAA). Snap-on does not

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[2] The statute provides that "[n]otice that a contract is subject to arbitration *pursuant to this chapter* shall be typed in underlined capital letters on the first page of the contract; and unless such notice is displayed thereon, the contract may not be subject to arbitration." 27-5-114(4), M.C.A. (1991) (emphasis added).

seek to compel arbitration under Montana state law but under federal law, which governs this arbitration clause.

Unlike Montana law, federal law imposes no similar warning requirement. Furthermore, the validity generally of an arbitration clause affecting interstate commerce is governed by federal law. *See Moses H. Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 24, 103 S.Ct. 927, 941, 74 L.Ed.2d 426 (1983). Relying on the Supremacy Clause (Article 6, clause 2) of the United States Constitution, the United States Supreme Court has held that the FAA "withdrew the power of the states to require a judicial forum for the resolution of claims which the contracting parties agreed to resolve by arbitration." *Southland Corp. v. Keating*, 465 U.S. 1, 10, 104 S.Ct. 852, 858, 79 L.Ed.2d 1, 12 (1984). State law is applicable only for fashioning general contract principles. *Perry v. Thomas*, 482 U.S. 483, 492 n. 9, 107 S.Ct. 2520, 2527 n. 9, 96 L.Ed.2d 426 (1987).

Vetter next argues that the arbitration clause is invalid because it lacks consideration and mutuality of remedy. The subject sentence allows Snap-on to seek "temporary relief from a court including but not limited to an injunction, pending arbitration of any dispute. . . . " However, this provision does not permit Snap-on to litigate whereas Vetter must arbitrate. Rather, Snap-on may seek temporary assistance from a court pending arbitration. For example, this provision allowed Snap-on to present this court with a petition to compel arbitration and a petition for a preliminary injunction. Mutual consideration exists because both Vetter and Snap-on agree to arbitrate "any controversy or dispute arising out of or relating to" the dealership agreement.

Vetter argues too that the entire agreement is void because it was fraudulently induced and also unconscionable. This arbitration provision specifies, however, that disputes relating to the parties' entry into the agreement are to be arbitrated. Thus, arguments striking in this way at the validity of the entire agreement must be submitted to the arbitrator. *Prima Paint Corp. v. Flood & Conklin Mfg. Co.*, 388 U.S. 395, 402-06, 87 S.Ct. 1801, 1805-07, 18 L.Ed.2d 1270 (1967). Additionally, "any doubts concerning the scope of arbitrable issues should be resolved in favor of arbitration." *Moses H. Cone Memorial Hospital*, 460 U.S. at 243-25, 103 S.Ct. at 941. Indeed, arbitration should be ordered "unless it may be said with positive assurance that the arbitration clause is not susceptible of an interpretation that covers the asserted dispute." *AT&T Technologies, Inc. v. Communications Workers of America*, 475 U.S. 643, 650, 106 S.Ct. 1415, 1419, 89 L.Ed.2d 648 (1986). Thus, all of Vetter's defenses to the dealership agreement may be submitted to the arbitrator for decision.

Finally, Vetter argues that the arbitration provision contains invalid forum selection and limitation of action clauses. The forum selection clauses are not material to this dispute since Snap-on has requested arbitration in the same location as Vetter's litigation and has also designated Montana arbitrators. Vetter may argue to the arbitrators that Montana law nullifies the one year limitation period set forth in the arbitration provision. *See e.g., O'Neel v. National Ass'n of Securities Dealers, Inc.*, 667 F.2d 804, 807 (9th Cir. 1982). This time limitation is a procedural matter best decided by the arbitrator.

Accordingly, the parties entered into a valid agreement to arbitrate the disputes in question and, thus, the

petition to compel arbitration should be granted. The court notes that the arbitration agreement is also valid as to Vetter's claims against Snap-on employees, but the court declines to compel Vetter to arbitrate his claims against third parties who are not before the court. The state court has jurisdiction over the Snap-on employees and may order Vetter to arbitrate those claims.

B. Application for Preliminary Injunction.

Snap-on seeks a stay of William Vetter's state court action. Snap-on does not seek a stay of Elaine Lapointe-Vetter's claims. The stay sought by Snap-on is generally prohibited by the Anti-Injunction Act, 28 U.S.C. § 2283, but three exceptions exist and one exception is applicable in this case. *See Atlantic Coast Lines R. Co. v. Brotherhood of Locomotive Engineers*, 398 U.S. 281, 286, 90 S.Ct. 1739, 1742, 26 L.Ed.2d 234 (1970). Under section 2283, "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, *or to protect or effectuate its judgments*." 28 U.S.C. § 2283 (emphasis added).

Because the petition to compel arbitration should be granted, any further proceedings in state court between William Vetter and Snap-on should be stayed as inconsistent with this order. This stay thus falls within the third exception contained in the Anti-Injunction Act, which exception allows this court to protect or effectuate its order compelling arbitration.

To secure a preliminary injunction, the moving party "must show either (1) a likelihood of success on the

merits and the possibility of irreparable injury or (2) the existence of serious questions going to the merits and the balance of hardships tipping in its favor." *Taylor v. Honig*, 910 F.2d 627, 631 (9th Cir. 1990). These two formulations represent two points on a sliding scale in which the required degree of irreparable harm increases as the probability of success decreases. *Id.* (citing *Oakland Tribune Inc. v. Chronicle Publishing Co.*, 762 F.2d 1374, 1376 (9th Cir. 1985)). Snap-on has presented the court with the parties' agreement to arbitrate any dispute relating to their dealership agreement and evidence that Vetter has attempted to litigate a dispute within the scope of the arbitration agreement. Thus, Snap-on has shown a likelihood of success on the merits and the possibility of the irreparable harm of losing the benefits of its arbitration agreement.

Vetter's motion to stay arbitration, dated September 30, 1993, is made upon the ground that Vetter will be irretrievably damaged if a court does not determine the validity of the arbitration clause and the scope of its coverage. Vetter argues that he will be irretrievably damaged if forced to arbitrate because he cannot afford to do so. The court finds that Vetter has already received the sought-after judicial determination of the validity of the arbitration clause and the scope of its coverage, and that inability to pay for arbitration as opposed to litigation does not rise to the level of irretrievable damage.

Snap-on is entitled to its requested relief staying state court proceedings pending the arbitration. However, because this court assumes, in light of the above, that neither Vetter nor the state court system will proceed further, no formal stay or injunction seems necessary. Out

of deference to and respect for the state court, therefore, none will enter at this time.

Accordingly,

IT IS HEREBY ORDERED that Snap-on's motion to compel arbitration is GRANTED.

IT IS FURTHER ORDERED that William C. Vetter shall submit to arbitration his claims against Snap-on which are currently pending in Cause No. 77498 in the District Court of Missoula County.

IT IS FURTHER ORDERED that Snap-on's petition for injunctive relief related to Cause No. 77498 in the District Court of Missoula County is GRANTED, but no formal order need enter at this time.

IT IS FURTHER ORDERED that Vetter's motion to stay arbitration is DENIED.

The clerk is directed forthwith to notify counsel of entry of this order.

Done and dated this 8th day of October, 1993.

/s/ Charles C. Lovell
CHARLES C. LOVELL
United States District Judge

EXHIBIT 2

John W. Larson, District Judge
Fourth Judicial District Dept. 3
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MONTANA FOURTH JUDICIAL DISTRICT COURT,
MISSOULA COUNTY

WILLIAM C. VETTER, an individual, and ELAINE LAPOINTE-VETTER, an individual, Plaintiffs, vs. SNAP-ON TOOLS CORPORATION, a corporation; JAMES GOMENDI, an individual; and STEVE GULLEDGE, an individual, Defendants.	Cause No. 77498/49 OPINION AND ORDER (Filed Oct. 25, 1993)

Pending before the Court are (1) Plaintiff William Vetter's Motion to Stay Arbitration and for Partial Summary Judgment, and (2) Defendants' Motion to Compel Arbitration and for Reconsideration of Motions to Stay Proceedings Pending Arbitration of Claims. The briefing having been completed and a hearing having been held on October 20, 1993, the motions are now ready for decision.

Plaintiff William Vetter's ("William") Motion to Stay Arbitration and for Partial Summary Judgment was filed on September 23, 1993. Since the filing of William's motion, however, Judge Lovell of the U.S. District Court for the District of Montana has issued an Opinion and Order finding that the arbitration clause at issue in this case is valid and enforceable by Defendant Snap-On Tools Corporation ("Snap-On") against William. *See* Opinion and Order, CV 93-34-M-CCL, filed Oct. 8, 1993.

This Court defers to the Opinion and Order of the U.S. District Court, and therefore finds that William's motion has been made moot by the U.S. District Court's decision. This Court therefore denies William's Motion to Stay Arbitration and for Partial Summary Judgment.

Defendants' Motion to Compel Arbitration and for Reconsideration of Motions to Stay Proceedings Pending Arbitration of Claims requests this Court for (1) an order compelling William to arbitrate his claims against Defendants James Gomendi ("Gomendi") and Steve Gulledge ("Gulledge"); (2) reconsideration of this Court's denial of a stay of the proceedings by William against Snap-On; and (3) reconsideration of its denial of a stay of the proceedings by plaintiff Elaine LaPointe-Vetter ("Elaine") against all of the Defendants. The Court will address each request in turn.

William's Claims Against Defendants Gomendi and Gulledge

Defendants argue that this Court must issue an order compelling William to arbitrate his claims against Gomendi and Gulledge because the U.S. District Court in

its Opinion and Order stated that "[t]he court notes that the arbitration agreement is also valid as to Vetter's claims against Snap-On's employees, but the court declines to compel Vetter to arbitrate his claims against third parties who are not before the court. The state court has jurisdiction over the Snap-On employees and may order Vetter to arbitrate those claims." Opinion and Order at 10. The Court has jurisdiction to order arbitration under the Federal Arbitration Act. *Passage v. Prudential-Bache Securities, Inc.*, 223 Mont. 60, 65, 727 P.2d 1298, 1300 (1986).

As a preliminary matter, the Court notes that the U.S. District Court stated that this Court *may*, not *must*, order William to arbitrate his claims against Gomendi and Gulledge. The U.S. District Court has not ordered this Court to do anything, and the decision on whether to compel William to arbitrate his claims against Gomendi and Gulledge is solely this Court's decision to make.

Nevertheless, as stated above, this Court defers to and accepts the U.S. District Court's determination that the arbitration clause at issue in this case is valid and enforceable. That clause (para. 11 of the franchise agreement) states that "any claim against an employee . . . of [Snap-On] shall be submitted to final and binding arbitration. . . . "

There is no dispute that Plaintiffs are suing Gomendi and Gulledge as employees of Snap-On. Plaintiffs' complaint against the Defendants at paragraph 3 specifically alleges that Gomendi and Gulledge "were, at all times material to this action, agents and employees of Snap-On. . . . " The complaint further alleges that

> in performing the acts and omissions alleged below, each Defendant was acting as the employee and/or agent of each other Defendant, each Defendant performed said acts and omissions within the course and scope of his/her employment and/or agency with the other Defendants and with the full permission and knowledge of the other Defendants, and the other Defendants authorized and/or ratified all acts and omissions of each other Defendant, as alleged below, pursuant to said employment and/or agency.

Complaint, para. 5.

Because Plaintiffs have sued Gomendi and Gulledge as employees and agents of Snap-On, and because the U.S. District Court has determined the arbitration clause to be valid and binding with respect to William, this Court holds that William, in accordance with the arbitration clause, must arbitrate his claims against Gomendi and Gulledge as employees of Snap-On.

Plaintiffs argue that Defendants have offered no new information since this Court declined to stay Plaintiffs' proceedings against Defendants on May 27, 1993, and that this Court should not reconsider its prior ruling. However, Judge Lovell's ruling that the arbitration clause is valid is in fact very significant new information. At the time of its May 27, 1993, Order, this Court did not yet know whether or not the arbitration clause was valid. Now that the clause has been determined to be enforceable with respect to William and Snap-On, it is by its terms also enforceable with respect to William and Snap-On's employees Gomendi and Gulledge.

The Court therefore orders William to arbitrate his claims against Gomendi and Gulledge, and stays William's proceedings against Gomendi and Gulledge in this Court pending the outcome of the arbitration.

Stay of Proceedings by William Against Snap-On

Defendants have moved this Court for reconsideration of its May 27, 1993, denial of Defendants' motion to stay William's proceedings pending arbitration of his claims pursuant to the arbitration clause. The Court denied the Defendants' earlier motion to stay proceedings on the grounds that the Vetters had stated claims that might not be subject to the arbitration clause, and that the validity of the clause was not yet clear. The U.S. District Court has now decided, however, that the arbitration clause is valid and does apply to all of William's claims against Snap-On, and has ordered William to submit his claims against Snap-On to arbitration. This Court defers to the judgment of the U.S. District Court.

This Court therefore hereby grants Defendants' motion for a stay of William's proceedings against Snap-On pending the outcome of the arbitration proceedings.

Stay of Proceedings by Elaine Against All Defendants

Defendants seek a reconsideration of this Court's May 27, 1993, denial of their motion to stay Elaine's proceedings against all Defendants on the grounds of judicial efficiency. Defendants argue that Elaine may not need to litigate her claims if William wins the arbitration, and that a win by Defendants at arbitration may have a

preclusive effect on Elaine under principles of res judicata and collateral estoppel, presumably because Defendants assert that Elaine's claims are derivative of her husband's.

Whether to grant a stay of proceedings pending the outcome of another proceeding lies within the Court's discretion. *See e.g., Lewis v. Multree,* 627 P.2d 94, 96 (Utah 1981); *Wood v. Millers Nat'l Ins. Co.,* 632 P.2d 1163, 1166 (N.M. 1981); 1 Am. Jur. 2d *Actions* § 97. Specifically, whether to stay litigation by a nonarbitrating party pending the outcome of an arbitration is in the discretion of the Court. *Moses H. Cone Memorial Hosp. v. Mercury Constr. Corp.,* 460 U.S. 1, 20 n.23 (1982). The Court should grant a stay only when the two proceedings involve an identity of parties and causes of action. *See e.g., Corinthian Pool Corp. v. National Northeast Corp.,* 492 F. Supp. 928 (D.N.H. 1980); *Culbertson v. Midwest Uranium Co.,* 132 F. Supp. 678 D. Utah 1955); 1 Am. Jur. 2d *Actions* § 97.

It is undisputed that Elaine did not sign the franchise agreement, that she is not subject to the arbitration clause, and that she will not be a party to the arbitration proceeding. Moreover, it is apparent from Elaine's affidavit of September 29, 1993, that Defendants made representations directly to Elaine and that Elaine invested her own money in the Snap-On franchise. Elaine thus has claims against Defendants separate from those of her husband that will not be adjudicated at the arbitration because Elaine will not be a party to the arbitration. Therefore, regardless of the outcome of the arbitration, Elaine will still have claims against Defendants that can be addressed only in this Court. A stay of Elaine's proceedings in this Court is therefore not appropriate.

Defendants urge this Court to stay Elaine's proceedings because a win by Defendants at arbitration may have a preclusive effect on Elaine under principles of res judicata and collateral estoppel. Defendants have, however, presented no authority for this assertion, and the Court has found none.

Both the doctrines of res judicata and collateral estoppel require that the party against whom the doctrine is asserted have been a party to the prior proceedings and that the issue against which the doctrine is asserted have been finally adjudicated in the prior action. *See, e.g., Demers v. Roncor, Inc.*, 249 Mont. 176, 182, 814 P.2d 999 (1991) (criteria for application of res judicata); *Smith v. Schweigert*, 241 Mont. 54, 58, 785 P.2d 195 (1989) (elements of collateral estoppel).

Moreover, equitable estoppel may not require a wife to be bound by the outcome of a prior proceeding against her husband where the wife was not a party to the prior proceeding. *See Smith v. Schweigert, sura,* [sic] 241 Mont. at 59.

Given that Elaine will not be a party to the arbitration between William and Defendants, it is readily apparent that her cause of action against Defendants most likely will not be precluded by res judicata, collateral estoppel, or equitable estoppel.

Therefore, the Court denies Defendants' motion to stay Elaine's proceedings against the Defendants and for a protective order pending the outcome of William's arbitration proceeding. Elaine's proceedings against Defendants shall proceed in accordance with the schedule agreed upon in the Scheduling Order dated September

21, 1993. Defendant's motion for a protective order is granted with respect to Williams' claims.

Accordingly, the Court

(1) denies William's motion to stay arbitration and for partial summary judgment;

(2) grants Defendants' motion to compel William to arbitrate his claims against Gomendi and Gulledge;

(3) grants Defendants' motions for protective order and to stay William's proceedings against Snap-On, Gomendi and Gulledge in this Court pending completion of arbitration; and

(4) denies Defendants' motions for protective order and to stay Elaine's proceedings against the defendants, and orders the proceedings to adhere to the schedule set forth in the Scheduling Order dated September 21, 1993.

DATED this 25th day of October, 1993.

/s/ John W. Larson
JOHN W. LARSON
District Judge

cc: Donald V. Snavely
Paul J. Petit

EXHIBIT 3

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UNITED STATES DISTRICT COURT
DISTRICT OF MONTANA
MISSOULA DIVISION

SNAP-ON TOOLS CORPORATION, Petitioner, -vs- WILLIAM C. VETTER, Respondent.	)	Case No. CV 93-34-M-CCL

NOTICE OF APPEAL
(Filed Oct. 29, 1993)

NOTICE IS HEREBY GIVEN that William C. Vetter, the Respondent above named, hereby appeals to the United States Court of Appeals for the Ninth Circuit from the following orders:

1. Opinion and Order filed on October 8, 1993, which granted Petitioner's Motion to Compel Arbitration and Petitioner's Petition for Injunctive Relief and denied Respondent's Motion to Stay Arbitration; and

2. Order filed on September 27, 1993, which denied Respondent's Motion to Dismiss for Lack of Jurisdiction and for Rule 11 Sanctions.

SNAVELY LAW OFFICES
Attorneys for Respondent
William C. Vetter

DATED: 10/29/93

By: /s/ Don Snavely
Donald V. Snavely
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DECLARATION OF SERVICE BY MAIL

Vida Long declares as follows:

I am an employee of the attorney of record for Respondent in this action. On October 29, 1993, I served a complete copy of the foregoing document on each attorney/party of record in this action by depositing the same in the United States Mails, at Missoula, Montana, in a separate envelope with the postage prepaid thereon, first class mail, addressed to each of the persons indicated below:

Person Served	Party Represented
Paul J. Petit Attorney at Law 195 Fairway Drive Missoula, MT 59803 Co-counsel for Petitioner	Petitioner, SNAP-ON TOOLS CORPORATION

Michael G. McCarty
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Firstar Center
777 East Wisconsin Avenue
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Co-counsel for Petitioner

Petitioner,
SNAP-ON TOOLS
CORPORATION

EXECUTED on October 29, 1993 at Missoula, Montana.

/s/ Vida Long
Vida Long